

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**George O. Ackerson,
Warren County, Iowa**

ADMINISTRATIVE ORDER

NO. 2011-SW-06

To: George O. Ackerson
1002 Norwood Drive
Norwalk, Iowa 50211

I. SUMMARY

This order requires you to remove and properly dispose of all solid waste located at the site described below in this order, and to pay a penalty of \$3,000.00, subject to your appeal rights stated in this order.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Bill Gross
Iowa Department of Natural Resources
Field Office No. 5
401 SW 7th Street, Suite 1
Des Moines, Iowa 50309
Phone: 515/725-0721

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322 Phone:
515/281-6243

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. On May 7, 2009, DNR received an anonymous complaint about a waste disposal site in a ravine behind a house located at 6753 Illinois Street in Warren County, Iowa (the site). On May 14, 2009, Bill Gross of DNR Field Office No. 5 visited the site and confirmed the existence of an open dump. The site is a rural residence property located west of Indianola, Iowa. Mr. Gross found miscellaneous waste materials in an overgrown wooded ravine northeast of the house on the property. The waste materials dumped at the site included household waste, boards, fencing, appliances and tires. Mr. Gross also observed orange water, possibly tainted with iron oxide from the solid waste, draining from the site through the ravine. Mr. Gross took photographs to document the violations.

2. The current owner of the site is George O. Ackerson of 1002 Norwood Drive in Norwalk, Iowa 50211. Mr. Ackerson purchased the site on August 14, 2007, from Darla K. Truman of 6923 Illinois Street, Indianola, Iowa. At the time of the sale, Ms. Truman signed a Groundwater Hazard Statement stating that there was no known solid waste disposal on the site. However, Ms. Truman has admitted to DNR in letters dated June 11, 2009; October 29, 2009; and June 9, 2010, that this solid waste was present on the property prior to the sale of the property.

3. On June 2, 2009, Mr. Gross talked to Mr. Ackerson by phone. Mr. Ackerson explained that the previous owner, Darla Truman, had signed a Real Estate Transfer Groundwater Hazard Statement that there was no known solid waste disposal on the site and no hazardous waste on the site. Mr. Ackerman faxed copies of the Groundwater Hazard Statement and Warranty Deed to Mr. Gross.

4. DNR sent a June 9, 2009, Notice of Violation letter to both Mr. Ackerson and Ms. Truman, requiring proper disposal of the solid waste located at the site by July 31, 2009. The letter required the submittal of disposal receipts to DNR, and that Mr. Gross be notified when the cleanup was completed.

5. On June 11, 2009, Mr. Gross received a handwritten note dated June 9, 2009, from Ms. Truman, stating that Mr. Ackerman was aware of the open dumped materials at the time of the sale of the site. Ms. Truman stated in her June 9 note that she offered to clean up the property, but Mr. Ackerson informed her that he would do it. She stated that she did not feel responsible to clean up the site.

6. On October 5, 2009, Mr. Gross re-visited the site and found that no cleanup had occurred. Mr. Gross also observed that orange water continued to drain from the disposal site into the ravine. He documented the continuing violations with photographs. An October 6, 2009, Notice of Violation letter was sent to Mr. Ackerman and Ms. Truman, stating that Mr. Gross had re-visited the site and found that open dumped material was still present and the orange liquid still flowing from the disposal site. Mr. Gross extended the cleanup deadline to November 15, 2009. The Notice of Violation letter was sent by certified mail to both Mr. Ackerman and

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Ms. Truman. However, Ms. Truman did not claim the certified letter, so the letter was sent to her by regular mail on October 26, 2009.

7. On November 3, 2009, Mr. Gross received an October 29, 2009, handwritten note from Ms. Truman, again stating that prior to the sale she offered to clean up the site, but that Mr. Ackerman had stated that he would do it. Ms. Truman again stated that she does not feel responsible to clean up the site.

8. On April 16, 2010, Mr. Gross visited the site again and found that no cleanup had occurred and that the conditions at the site remained the same. Mr. Gross again took photographs of the site. A June 2, 2010, Notice of Violation letter was sent to both Mr. Ackerson and Ms. Truman, requiring proper disposal of the solid waste located at the site.

9. On June 11, 2010, Mr. Gross received a handwritten note dated June 9, 2010, from Ms. Truman, again stating that she offered to clean up the site prior to the sale to Mr. Ackerson, but that Mr. Ackerson had stated that he would clean up the site. She also reiterated that she does not feel responsible for cleanup of the site.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

2. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The above-described facts demonstrate non-compliance with these provisions.

3. Iowa Code section 558.69 requires the reporting of disposal sites and hazardous waste materials with each declaration of value submitted to a county recorder upon the conveyance of real property on forms prescribed by the DNR. However, the DNR does not approve or disapprove of property statements based on these transfers. Iowa Code section 558.69 specifically provides that the owner of the property is responsible for the accuracy of the information submitted on the form, and that the provisions of that section do not limit liability which may be imposed under a contract or under any other law.

V. ORDER

THEREFORE, DNR orders George O. Ackerman to do the following:

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1. By no later than June 1, 2011, remove all solid waste from the site located at 6753 Illinois Street in Warren County (the site), and provide DNR Field Office No. 5 with landfill or recycling receipts as proof of proper disposal;
2. Immediately halt improper illegal open dumping of waste materials at any location in the State of Iowa and specifically at the site, and comply in the future with all state and local requirements regarding the proper disposal of solid waste and the prohibition against illegal open burning;
3. Within 90 days of the date of this order, pay a penalty of \$3,000.00; and
4. Pay an additional stipulated penalty of \$50.00 per day for each day past the June 1, 2011, deadline that cleanup remains uncompleted.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$3,000.00 is assessed. The penalty shall be paid according to the penalty payment chart set out above. The administrative penalty is determined as follows:

Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with a penalty of \$3,000.00 and stipulated penalties for violations of the compliance schedule set forth in this administrative order.

The stipulated penalties in this administrative order are for future violations, if they occur. The stipulated penalties are designed to reflect the potential economic benefit to George O. Ackerson for failure to make the expenditures needed to stay on schedule. Such penalties are related to the probable severity of the violation in that not meeting the compliance schedule contained in this administrative order is a serious matter. The penalties also would be related to future culpability in that George O. Ackerson has been put on notice by this administrative order that stipulated penalties will result if the compliance schedule is not met. The administrative penalty is as follows:

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Economic Benefit – George O. Ackerson has achieved an economic benefit from improper waste disposal and from failure to clean up the disposal site. He has saved time, labor, and landfill costs by not timely and properly removing, transporting and disposing of the solid wastes from the site. Proper disposal of the solid wastes dumped at the site would have required payment of landfill tipping fees and transportation costs. The estimated cost to clean up the site and properly dispose of the waste at a landfill is estimated to be as follows: ten hours of labor at \$20.00 per hour, for a total of \$200.00; two hours of transportation costs to haul the waste to the local landfill near Winterset, at \$50.00 per hour for a total of \$100.00; and approximately two tons of materials to be disposed of at the landfill, with landfill fees of \$50.00 per ton for a total of \$100. Based on these considerations, \$400.00 is assessed for this factor.

Gravity of the Violation – Compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Since June 2009, DNR has observed orange water leaching from the solid waste at the site into a ravine. Based on the above considerations, \$1,000.00 is assessed for this factor.

Culpability – George O. Ackerson has been specifically aware of the open dumping site since he purchased the site in August 2007. Further, he has been specifically aware of the need to clean up the site since DNR's first Notice of Violation letter sent to him in June 2009. Mr. Ackerson claims that Ms. Truman misled him that there was no solid waste dumped onto the property, yet he allegedly was aware of the open dumped materials at the time of the sale when he informed Ms. Truman that he would perform the cleanup. Therefore, \$1,600.00 is assessed for this factor.

VII. APPEAL RIGHTS

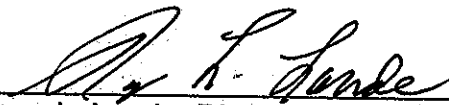
Pursuant to Iowa Code section 455B.308 and 561 IAC 7.4(1), a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of DNR and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.307. Compliance with sections V.1-V.3 in Section "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the specific

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violations described in Section "IV. Conclusions of Law" of this order. The DNR reserves the right to issue an administrative order or to refer to the attorney general's office in lieu of collecting stipulated penalties pursuant to this order.



Roger L. Lande, Director
Iowa Department of Natural Resources

Dated this 2d day of
March, 2011.

Warren County Solid Waste file; Anne Preziosi; DNR Field Office 5; VI.C